

RESTORATION PLAN AGREEMENT

This Restoration Plan Agreement (“**Agreement**”) by and between **PHILLIPS FARM, LLC**, (“**Phillips**”) and the **CITY OF COLUMBUS, OHIO**, which is acting by and through its Departments of Recreation and Parks and Public Utilities (“**City**”, “**Public Utilities**”, or “**CRPD**”), a municipal corporation, whose address is 1111 E. Broad Street, Columbus, Ohio 43215, is entered into on _____, 2020 (“**Phillips**”, “**City**”, “**Public Utilities**” and “**CRPD**” collectively referred to as “**Parties**”).

- A. **WHEREAS**, Phillips intends to construct an underground sanitary sewer line (“**Improvements**”) in, on, under, and through that City-owned real property, identified as Franklin County Tax Parcel 010-277286, commonly known as Upper Albany Park (“**Property**”); and
- B. **WHEREAS**, the Parties need to address numerous environmental and public concerns as a result of Phillips installing the Improvements as authorized by Ordinance 0624-2020; and
- C. **WHEREAS**, Phillips must enter into a Restoration Plan Agreement with the City to establish the material, means, and methods that Phillips will utilize to restore the Property after the Improvements’ initial construction and all of Phillips’ subsequent entries onto the Property to maintain, operate, control, reconstruct, fix, or remove the Improvements; and
- D. **WHEREAS**, the Parties intend for this Agreement to establish the current and future basis for all of Phillips’ restoration efforts on the Property and its installation of the required Property Improvements; and
- E. **WHEREAS**, the Parties intend for this Agreement to be attached as Exhibit “B” to the Sanitary Sewer Easement and the Temporary Construction Easement; and

NOW, THEREFORE, for valuable consideration, including the mutual covenants and benefits stated in this Agreement, Phillips and the City agree as follows.

1. **GENERAL USE**

- 1.1. **TEMPORARY CONSTRUCTION EASEMENT.** Subject to the terms and conditions of the temporary easement granted pursuant to Ordinance 0624-2020, Phillips may temporarily use no more than 0.112 acres for construction of the initial installation of the Phillips’ Improvements on the Property.
- 1.2. **SANITARY EASEMENT.** Subject to the terms and conditions of the permanent easement granted pursuant to Ordinance 0624-2020, Phillips may utilize 0.210 acres of the Property to locate and construct the Phillips’ Improvements through the Property.
- 1.3. **FENCING AND STAKING.** Phillips shall completely stake all easement and temporary easement areas and place silt fencing at the outer limits of all easement areas during construction. All stakes and fencing shall be removed at the completion of the Improvements.
- 1.5. **LEGAL COMPLIANCE.** Pursuant to any entry upon the Property for any reason, Phillips shall conduct all activity with regard to its Improvements and subsequent restoration of the Property in strict compliance with all applicable federal, state, and local laws and regulations.
- 1.6. **CONSTRUCTION SCHEDULE.** Upon commencement of construction, Phillips shall diligently prosecute to completion the Improvements in the easement areas, so as to minimize the duration of any activities and impacts on the Property. It is estimated that the construction of the Improvements on the Property should be completed within three (3) months of the start of construction.

2. **SPECIFIC USE, IMPACT, & RESTORATION.** In addition to abiding by the terms and conditions of the corresponding easements, Phillips shall restore the Property in accordance with the following:

2.1. **VEGETATION**

2.1.1. **DEFINITION.** Vegetation is defined as any trees, brush, or sod.

2.1.2. Phillips shall be permitted to remove (7) trees within the easement and temporary easement as needed during the Improvements' initial construction, as outlined within the Tree Survey dated November 5, 2019. Any other proposed tree impacts will need to be reviewed and approved by CRPD, prior to any removal. Such approval shall be at the sole discretion of CRPD. Phillips will conduct a second tree survey post construction and compare the results to the baseline tree survey in order to verify the total amount of trees removed. CRPD reserves the right to require additional restorative measures if more than seven (7) trees are verified to have been removed. Additionally, Phillips shall comply with all applicable terms of City of Columbus Executive Order 2015-01 as it relates to tree preservation.

2.1.3. Phillips shall take all reasonable precautions to avoid damage of any kind, directly or indirectly, to any of the Property's Vegetation, other than the agreed upon removal of invasive species in the area indicated on Exhibit A, before, during, or after the Improvements' construction; however, should Phillips, directly or indirectly, damage any Vegetation on the Property at any time before, during, or after the Improvements' construction, then Phillips shall mitigate the Vegetation damage per CRPD'S direction, specification, and satisfaction. Phillips shall only ever use native plant material suitable to the area to restore the Property. Phillips shall submit to CRPD a list of the intended native plant material, which Phillips shall receive approval and authorization from CRPD prior to the use of the native plant material, which shall not be unreasonably withheld.

2.2 **PROPERTY IMPROVEMENTS**

Following the initial installation of the Phillips Improvements, Phillips shall complete, as outlined in the Restoration Plan, all Property Improvements including but not limited to the planting of additional trees, installation of fencing, installation of a limestone connector path and the removal of invasive species within the Property, as generally shown on Exhibit "A." The plantings, fence and connector path will be located per CRPD's direction, specifications and satisfaction. The planting will include native plant material, as specified by CRPD. Phillips shall warrant all restoration work through June 1, 2022.

2.3. **WETLANDS**

2.3.1. Phillips shall be allowed to disturb approximately 0.01 acre of wetland in order to install the Improvements. The wetland disturbance is subject to a Nationwide Permit #29 with the U.S. Army Corps of Engineers (USACE). As of the date of this agreement, the receipt of the permit from the USACE is pending. Phillips will forward the permit to CRPD upon receipt. No work will be conducted in the wetland until the permit is received from the USACE.

2.3.2 Following the initial installation of the Improvements through the wetland, Phillips will restore the wetland as required by Nationwide Permit #29. This includes backfilling utility trenches with native soil, reserving the native hydric topsoil for the final layer. Backfilling will occur to the extent necessary to establish a post-construction surface elevation that matches pre-construction condition. A native emergent wetland seed mix, as specified by CRPD, will be spread across the surface of the disturbed wetland.

2.4. UTILITIES

2.4.1 Phillips shall not, in any manner, directly or indirectly, affect any portions of existing utilities located on the Property.

2.4.2 Phillips shall obtain all permits, approvals, and authorizations from any utility or public agency, including the Department of Public Utilities for the City, and take all reasonable precautions to avoid impacting, in any manner, directly or indirectly, the Property's existing utilities before, during, or after the Improvements' construction.

2.5. STAGING AREA

2.5.1 Phillips is permitted to establish a Staging Area within the Temporary Construction Easement compliant with all terms and conditions of the Temporary Construction Easement.

2.5.2 By no later than May 1, 2021 Phillips shall reasonably restore the land of the Staging Area to its existing condition or better, prior to Phillips' entry.

2.5.3 Restoration of the Staging Area shall be consistent with the terms of the Restoration Plan for Vegetation, Wetlands and Utilities.

2.5.4 Phillips' restoration shall also include but is not limited to: (1) removal of all gravel, unless otherwise agreed to in writing by Phillips and City, and other material incidental to the Improvements' construction; (2) aeration of all turf area; (3) returning the Property to existing grade; and (4) establishing a seed bed of four (4") inches of topsoil to ensure that sod can be mowed in the future.

- a) Seeding of the Property shall be between August 15, 2020 to October 15, 2020 and April 15, 2021 to June 15, 2021. If Phillips' restoration of sod does not reestablish, Phillips shall reseed as necessary to restore the Property and guarantee there will be established turf in all areas disturbed on the Property. The foregoing is not intended to create a perpetual guarantee obligation on Phillips, but rather, to the extent any area of the Property does not reestablish consistent with the condition of the rest of the Property, Phillips shall take all reasonable steps to ensure the City's Property is in as good of condition, if not better condition, then before the construction of the Improvements.
- b) Phillips shall use the CRPD specified seed mix.

2.6. **SURFACE SETTLING, DIPPING, & EROSION.** Phillips represents that the installation of its Improvements shall not cause surface settling or dipping or affect the naturally occurring condition on the Property. However, if at anytime the Improvements cause ground settling or dipping or erosion, Phillips shall restore the Property to its original surface level and naturally occurring condition.

2.7. **RESTORATION CONFORMATION & CLARIFICATION.** Phillips shall contact the City and receive written instructions from the City's Departments of Public Utilities and Recreation and Parks, anytime Phillips needs clarification regarding how to properly conform to the restoration terms of this Agreement.

2.8. **CONTINGENCY.** All of Phillips' property rights in, on, under, over, upon, and through any portion of the Property are contingent upon Phillips adhering to the terms of this Agreement. Phillips' failure to abide by the terms of this Agreement may cause termination of Phillips' property rights and those rights may automatically revert back to the City. Prior to any termination resulting from Phillips' violation of this Agreement, Phillips shall be given thirty (30) days from the date of written notice of the violation to cure said violation.

- 2.9. **EMERGENCY.** Under emergency circumstances, Phillips may conduct all work necessary on the Property to secure the Improvements and protect the public from harm; however, as soon as possible, Phillips shall obtain all necessary approvals from the City, and Phillips shall mitigate and restore the Property pursuant to this Agreement.
- 2.10. **SATISFACTION.** Pursuant to the Improvements' initial construction and all future entry onto the Property, all of Phillips' mitigation and restoration efforts under this Agreement shall be performed to the satisfaction of the City.
3. **INDEMNIFICATION & RELEASE.** Phillips, its successors and assigns, agrees to forever indemnify, release, defend, and hold the City and all of its agent(s), employee(s), and representative(s) harmless from and against all claims, damages, losses, suits, and actions, which include attorney's fees, arising or resulting from Phillips and its agent(s), contractor(s), subcontractor(s), representative(s), or employee(s) (i) use of the Easement Area, (ii) constructing, installing, using, operating, maintaining, and controlling the Improvement, or (iii) exercise of any rights in this Easement. This indemnification shall not apply to damages determined to be solely caused by the negligence or willful misconduct of the City, or its successors or assigns.
4. **SUCCESSORS AND ASSIGNS.** This Agreement and the matters contained in this Agreement shall inure to the benefit and be binding upon the respective successors and assigns of the Parties.
5. **NOTICES.** All notices, which are required for either party to serve upon the other, shall be effectively served if personally delivered or sent by certified mail, return receipt requested, and addressed as follows:

If to City:

City of Columbus, Ohio
Recreation and Parks Department
 1111 E. Broad Street
 Columbus, OH 43205
 Attn: Property Manager

& copies to:
Columbus City Attorney
Real Estate Division
 77 N. Front St., 4th Fl.,
 Columbus, OH 43215
 Attn: Chief Real Estate Attorney

If to PHILLIPS:

Phillips Farm, LLC
 Attention Joe Ciminello
 250 W. Old Wilson Bridge Rd.
 Worthington, Ohio 43085

*Either party may, with timely written notice given to the other party, specify a new address that further notice shall be sent.

6. **GOVERNING LAW, JURISDICTION:** This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio. All claims, counterclaims, disputes and other matters in question between the Parties arising out of or relating to this Agreement or its breach will be decided in a court of competent jurisdiction within the County of Franklin, State of Ohio.
7. **REMEDIES CUMULATIVE.** All rights and remedies of the Parties enumerated in this Agreement shall be cumulative, and, except as specifically contemplated otherwise by this Agreement, none shall exclude any other right or remedy allowed at law or in equity and the rights or remedies may be exercised and enforced concurrently.
8. **WAIVER.** No waiver of any covenant or condition or the breach of any covenant or condition of this Agreement shall be taken to constitute a waiver of any subsequent breach of such covenant or condition nor to justify or authorize the non-observance of any other occurrence of a breach or of any other covenant or condition of this Agreement.
9. **HEADINGS.** The captions and headings contained in the Agreement are included only for

convenience of reference and do not define, limit, explain, or modify this Agreement or its interpretation, construction, or meaning, and the captions and headings are in no way to be construed as part of this Agreement.

10. **SEVERABILITY.** If any provision of this Agreement or the application of any provision to any person or to any circumstance shall be determined to be invalid or unenforceable, then such determination shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, which all other provisions shall remain in full force and effect, and it is the Parties' intent that if any provision of the Agreement is susceptible of two or more constructions, one that would render the provision enforceable and the other or others that would render the provision unenforceable, then the provision shall possess the meaning that renders it enforceable.
11. **NUMBER AND GENDER.** When used in this Agreement, the singular number and neutral gender of each personal pronoun shall be construed to mean such number and gender as the context, circumstances or its antecedent may require.
12. **ENTIRE AGREEMENT.** Except as provided in the Easements, this Agreement constitutes the entire agreement between the City and Phillips with respect to this Agreement's subject matter, and this Agreement supersedes all prior and contemporaneous agreements between the City and Phillips in connection with this Agreement's subject matter. No officer, employee, or other servant or agent of the City or Phillips is authorized to make any representation, warranty, or other promise not contained in this Agreement. No change, termination, or attempted waiver of any of the provisions of this Agreement shall be binding upon the City or Phillips unless in writing and signed by the appropriate authorities of the affected party.
13. **RELATIONSHIP OF PARTIES:** Parties understand and agree that no provision or any acts or representation by either party contained in this Agreement shall be deemed to create any relationship other than the relationship of grantor and grantee. Nothing contained in this Agreement shall be deemed or construed by either the City or Phillips, nor by any third party, as creating any type of agency, partnership, or joint venture relationship between the Parties.
14. **TIME OF ESSENCE.** Parties agree that *time is of the essence* as to all provisions of this Agreement.
15. **GOOD FAITH AND COOPERATION.** Parties shall execute and apply good faith and cooperation to all terms and conditions contained in this Agreement.
16. **AUTHORITY TO BIND.** The signatories of this Agreement represent and affirm that they have the authority to bind themselves and their respective party to this Agreement.

Signatures Begin on the Following Page.

APPROVED:

In witness whereof, Grantee, **PHILLIPS FARM LLC**, an Ohio limited liability company, by its duly authorized representative, **Jonathan Wilcox**, who represents and warrants personally possessing legal authority and capacity to acknowledge this instrument on behalf of Grantee, does voluntarily acknowledge this instrument on behalf of Grantee this ____ day of _____, 2020.

PHILLIPS FARM, LLC
an Ohio limited liability company

By: _____

Print Name: _____

Title: _____

STATE OF OHIO)
COUNTY OF FRANKLIN) SS:

BE IT REMEMBERED that on _____, 2020, this instrument was voluntarily acknowledged before me by _____, _____ on behalf of **PHILLIPS FARM, LLC**, an Ohio limited liability company.

(SEAL)

Notary Public

No Oath or Affirmation administered to signor(s) with regard to this notarial act.

APPROVED:

In witness whereof, Grantor, **CITY OF COLUMBUS, OHIO**, a municipal corporation, by its duly authorized representative, **Paul Rakosky, Interim Director**, Recreation and Parks Department, pursuant to authority granted by Columbus City Council in **Ordinance Number 0624-2020**, does voluntarily acknowledge this instrument on behalf of Grantor this ____ day of _____, 2020.

CITY OF COLUMBUS, OHIO,
a municipal corporation

By: _____
Paul Rakosky, Interim Director
Department of Recreation and Parks

STATE OF OHIO)
COUNTY OF FRANKLIN) SS:

BE IT REMEMBERED that on _____, 2020, this instrument was voluntarily acknowledged before me on behalf of the **CITY OF COLUMBUS, OHIO**, by **Paul Rakosky, Interim Director**, Department of Recreation and Parks.

(SEAL)

Notary Public

No Oath or Affirmation administered to signor(s) with regard to this notarial act.

**City of Columbus
Park Enhancement
Plan February 2020**

**Illustrative Plan
Total Acreage +/-10.5**

- 1 Temporary Easement
- 2 Permanent Easement
- 3 Proposed Sanitary Sewer
- 4 Proposed Tree Enhancement Area/
Invasive Species Removal
- 5 Chain Link Fence to be Located Along
Property Boundary
- 6 Limestone Screening Leisure Trail
- 7 Limestone Screening Leisure Trail
by Others



Proposed Tree Planting Table:

Common Name	Botanical Name	Size	Quantity
Swamp White Oak	Quercus bicolor	#15	7
Pin Oak	Quercus rubra	#15	7
Red Oak	Quercus rubra	#15	8



Swamp White Oak



Pin Oak



Red Oak

